

§ 904.215 Consolidation.

The Chief Administrative Law Judge may order that two or more administrative proceedings that involve substantially the same parties or the same issues be consolidated and/or heard together, either upon request of a party or *sua sponte*.

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at any other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, direct the parties to appear for a conference or arrange a telephone conference. The Judge shall provide at least 24 hours notice of the conference to the parties, and shall record such conference by audio recording or court reporter, to consider:

(1) Simplification or clarification of the issues or settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(5) The procedure, course, and conduct of the administrative proceeding;

(6) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing; or

(7) Such other matters as may aid in the disposition of the administrative proceeding, including the status of settlement discussions.

(b) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference, and shall provide a transcript of the conference upon the request of a party.

DISCOVERY

§ 904.240 Discovery generally.

(a) *Preliminary position on issues and procedures (PPIP)*. Prior to hearing the Judge will ordinarily require the parties to submit a written PPIP. Except for information regarding a respondent's ability to pay an assessed civil

penalty, this PPIP will normally obviate the need for further discovery.

(1) The PPIP shall include the following information: A factual summary of the case; a summary of all factual and legal issues in dispute; a list of all defenses that will be asserted, together with a summary of all factual and legal bases supporting each defense; a list of all potential witnesses, together with a summary of their anticipated testimony; and a list of all potential exhibits.

(2) The PPIP shall be signed by the party and by an attorney, if one is retained. The PPIP shall be served upon all parties, along with a copy of each potential exhibit listed in the PPIP.

(3) A party has the affirmative obligation to supplement the PPIP as available information or documentation relevant to the stated charges or defenses becomes known to the party.

(b) *Additional discovery*. Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: Deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission. With respect to information regarding a respondent's ability to pay an assessed civil penalty, the Agency may serve any discovery request (*i.e.*, deposition, interrogatories, admissions, production of documents) directly upon the respondent without first seeking an order from the Judge.

(c) *Time limits*. Motions for depositions, interrogatories, admissions, or production of documents or things may not be filed within 20 days of the hearing except on order of the Judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(d) *Oppositions*. Oppositions to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.